

**Towards a New Architecture of
Local Government with
Special Reference to Uttarakhand**

B. K. Joshi

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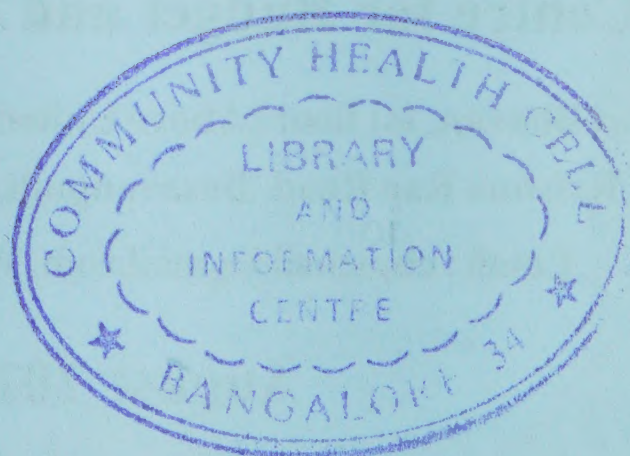


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Acknowledgement

The idea of writing this paper occurred to me during the course of reviewing the studies on local government for the **Looking Ahead** seminar of the Centre for Budget and Policy Studies, Bangalore in November, 2009. I am grateful to CBPS in general and Dr. Vinod Vyasulu in particular for giving me this opportunity. I also benefited considerably from the high level of discussions during the seminar. An earlier version of this paper formed the basis of the Professor G. D. Tewari Memorial lecture that I was invited to deliver at Kumaun University, Nainital in March 2010. I am grateful to Prof. B. K. Tewari of the political science department of Lucknow University, and the son of Prof. G. D. Tewari, who had organised the lecture in memory of his father.

Foreword

After ten years of research and advocacy in the field of decentralization, we at CBPS, conducted an open peer review of our work. Based on the feedback and insights received during the seminar, we are now implementing a longer term programme in which we provide research based support to policy debates. This paper by Prof. B.K. Joshi is part of this larger research programme of CBPS.

We are grateful to Prof. Joshi, a practicing Political Scientist based in Dehra Dun, for accepting our request to work on the theme of decentralization. His specific work on the state of Uttarakhand is the first of its kind. It has brought out the need for complete redesign of devolution process in Uttarakhand. We hope that this paper enriches the debates on the subject and leads to new insights for both research and policy.

We are happy to be publishing this paper in collobaration with Doon Library and Research Centre, a public library registered as a society in Dehradun since 2006. The Library caters to the general reader, and also supports and promotes research from a social science perspective on Himalayas in general and Uttarakhand in particular. This publication would add value to the collection of books, journals and other materials in social science that the Libarary hosts.

M.S.Ramaprasad

Secretary

Towards a New Architecture of Local Government with Special Reference to Uttarakhand

B. K. Joshi

Introduction

In this paper I have argued for the need to rethink the architecture of local government in Uttarakhand. Since the future of local government in Uttarakhand cannot be visualised in isolation from the national situation, I have also focussed on the need to restructure the local government system in India. The paper is based on the premise that an effective system of local government is a precondition for good governance, especially in a mountain state like Uttarakhand, where the population is scattered in small settlements with poor communication and limited mobility. An empowered and representative local government structure with clearly defined functions and jurisdiction is necessary for ensuring participation, transparency and accountability.

While thinking about a new architecture of local government in any state, we have to bear in mind that we do not have the luxury of writing on a clean slate. We have to take note of certain constraints, which we may not be able to fully surmount. Two deserve special mention. One is the rather long (and at times

tortuous) history of local government in the country¹ and the state and the other is the prescriptive framework of local government for the whole country laid down in the 73rd and 74th amendments of the Constitution. Together they delineate the broad parameters within which the structure and pattern of local government may be envisioned. This is not to say that both provide an ideal or perfect basis for local government. On the contrary, there are strong reasons to challenge and bring a critical gaze to bear on some of the paths which the evolution of local government in India and Uttarakhand (earlier Uttar Pradesh) have taken, as also on aspects of the 73rd and 74th amendments which may be in need of revision.

This paper is divided into three sections. Section I provides a broad critical overview of the evolution of modern local government in India. Section II contains a review of the state of local government in Uttarakhand. The third and final section, prior to the section on Conclusion, draws on the previous two and provides a framework for restructuring local government in Uttarakhand.

I Evolution of Local Government in India

Modern local government in India² has a rather long history extending to the earliest years of British rule under the East India Company rule. The first municipal body was established in Madras

in 1688. The other two Presidency towns of Bombay and Calcutta soon followed suit. These earliest corporations, it needs to be remembered, did not have any legislative backing. They were set up on the instructions of the Directors of the East India Company with the consent of the Crown. They were, moreover, non-representative bodies consisting entirely of nominated members from among the non-native population. They were set up mainly with a view to provide sanitation in the Presidency towns, as the situation in this respect left a lot to be desired.³ These early municipal bodies were also not very effective institutions even in respect of the limited civic functions, mainly sanitation, entrusted to them.

Act X of 1842 was the first formal measure for the establishment of municipal bodies; but it was applicable only to the Bengal Presidency. It provided for the setting up of a Town Committee for purposes of sanitation on the application of two-thirds of the householders. Incidentally, the Act remained inoperative in Bengal; but Town Committees under it were set up in the two hill stations of Mussoorie in 1842 and Nainital in 1845 on the request of European residents. Uttarakhand thus has the distinction of having some of the earliest municipalities established in the country, outside the Presidency towns. Their record too was not

very encouraging. According to Tinker they were not very successful in either place (Tinker: 1954, p. 29). When the Government of India passed Act XXVI in 1850 the municipal bodies of Mussoorie and Nainital were reconstituted under it. The period after 1850 saw the establishment of a number of municipal bodies in the country. Tinker gives a list of about 540 municipalities established between 1850 and 1870 (Tinker: 1954, Table 1, pp. 30-31). The chief among these were Darjeeling (1850), Simla (1851), Dehradun (1857), Bareilly (1858), Kanpur (1861), Lucknow, Thana, Howrah (1862), Delhi, Agra, Allahabad, Moradabad (1863), Meerut, Almora (1864), Saharanpur (1867), Benares (1868).

It needs to be emphasised that the motivation for establishing municipal bodies in the initial years was not any commitment to local government on the part of the British. Rather it was inspired by the desire to raise money from the local population for provision of civic services. Thus when the Directors of the East India Company decided to establish a municipal corporation in Madras, they wrote to the Madras Council on 28 September 1687 to say:

the people would more willingly and liberally disburse five shillings towards the public good being taxed by themselves, than sixpence

imposed by our despotical powers (notwithstanding they shall submit when we see cause) ... (Tinker: 1954, p. 25)

A secondary motive behind the establishment of municipal local government institutions, according to Arkaja Singh was the desire for “mentoring native political leadership and ameliorating the causes of political dissent in India, while at the same time reinforcing the structure of colonial rule by directing native political aspirations towards constructive forms of self government” (Singh: 2009).⁴

The transformation of municipal bodies from a body of Europeans to representation of the native population, and from a nominated to an elected body was a slow and long-drawn process. It was only accomplished in stages. According to Tinker the main reason for the development of local institutions along these lines in the 1860s was the financial constraints faced by the government in the aftermath of the 1857 uprising. Indian finances had been under strain for quite some time before 1857 as income was almost exclusively dependent on the inelastic land revenue, while expenditure had been constantly rising as a result of the number of wars in which the British were engaged leading to constant deficits. The response, articulated by James Wilson, the newly appointed Finance Member was financial decentralisation viz.,

transfer of responsibility for roads and public works to local bodies. Decentralisation of powers and responsibility for raising resources to fulfil the new mandate necessarily entailed inducting more natives into the local bodies through provincial legislation. This process continued apace during the 1860s and 1870s. As expected the results varied from province to province as Table 1, given below, shows. While Punjab had the largest number of municipalities, it did not fare too well in terms of elected members. The three Presidencies of Bengal, Bombay and Madras too were not in too good a position in this respect. On the other hand all 61 municipalities of the Central Provinces and 75 of the 107 municipalities in the North-Western Province were either partly or wholly elected.

Table 1: Composition of Municipal Boards, 1881

Province	Total number of municipalities	Municipalities with members partly or wholly elected	Municipalities with members all nominated
Bengal	138	3	135
Bombay	162	10	152
Madras	47	12	35
N-W Province	107	75	32 (all in Oudh)
Punjab	197	5	192
CP	61	61	—

Source: Tinker: 1954, Table 2, p. 38.

It is quite clear from the above table that by 1881 the progress in introducing the elected principle in the local bodies was rather slow. More than three-fourths of the municipalities (546 of the 712 listed) remained fully nominated. This has led Tinker to remark “by 1880 the principle of local self-government had been put into practice only in the cities of Calcutta and Bombay, and in a few of the towns of Central Provinces and North-Western Province. Elsewhere, although a framework of local administration and local taxation existed, control was firmly in the hands of the servants of the government” (Tinker: 1954, p. 42).

The next important date in the evolution of modern local government in India is 1882 when Lord Ripon initiated his famous reforms outlined in the Resolution on Local Self-Government of 18th May. The general principles underlying the resolution bear repetition as they underline the liberal values that motivated it and also provided the template for organisation of local government for many years to come. They may be summarised as follows:

- Political education is the primary function of local government, of greater importance than administrative efficiency

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- Rural boards, similar to municipal boards, to be set up: the unit of administration to be small – the subdivision, tahsil or taluks
 - All boards should contain a two-thirds majority of non-officials, preferably elected
 - Chairmen of all local boards should preferably be non-officials
 - Elections to begin immediately in more progressive towns and extended gradually to smaller towns and the countryside
 - ‘Control should be exercised from without rather than within’
 - Each province to interpret the general directions of the Resolution according to local conditions. (Tinker: 1954, p. 45)

Unfortunately, as usually happens, the above principles were not fully followed in the legislation passed subsequently.⁵ The legislation reflected the prejudices of the administrators, some of whom were not fully in tune with the liberal ideals of the Resolution. The main bone of contention was whether the Chairman should be a non-official or the District Officer. The

heads of all major provinces were in favour of the District Officer. The only province where the spirit of the Resolution was followed in this regard was the Central Provinces. Elsewhere the District Magistrate remained the dominant figure. The situation was somewhat better in the towns than in the rural areas.

By 1885 there was a gradual increase in both the number of municipal boards that were wholly or partly elected and the proportion of elected members in the boards (see Table 2 below).

Table 2: Composition of Municipal Boards, 1885

Province	Total no. of municipalities	Municipalities wholly or partly elected	Percentage of elected members
Bengal	147	118	50.4
Bombay	162	40	10.8
Madras	54	33	24.6
N-W P	109	101	79.8
Punjab	197	122	42.6
CP	58	58	60.2

Source: Tinker: 1954, Table 3, p. 4

In a matter of four years, between 1881 and 1885, while the number of municipalities remained almost constant, the number that were wholly or partly elected went up from 166 to 472 (or from 23 per cent of all municipalities to about 65 per cent). At the same time elected members constituted a significant percentage of the total membership of municipalities in some provinces. This percentage was as high as almost 80 in the North-Western Province, 60 in the Central Provinces and 50 in Bengal. At the other end it was only about 11 per cent in Bombay, 25 per cent in Madras and 43 per cent in Punjab. This situation remained almost unchanged for the next twenty years. Despite being partly or wholly elected bodies, municipalities in the 19th century could hardly be called democratic bodies in the modern sense of the term. Two features of elections, in particular, vitiated their democratic credentials. Members did not represent territorial constituencies or wards, but were instead chosen by caste or religious groups. Hence they could not claim to represent all people living in a specified geographical space, but only their caste or religious brethren. Secondly, the electorate was extremely

limited. Tinker estimates that in most provinces it comprised less than two per cent of the urban population. In Bengal it was about five per cent. A further constraint was the system of open voting as a result of which people were reluctant to vote for fear of annoying powerful citizens. As a result not more than four or five hundred voters participated in elections even in the large towns. It was quite common for candidates to be returned unopposed (Tinker: 1954, p. 50).

A truly noteworthy, and perhaps even a revolutionary, feature of Lord Ripon's Resolution was that the rural areas were also brought within the framework of local self-government, six years before there were any rural councils in England. The Resolution envisaged a two-tier structure of rural local bodies with the 'sub-division, taluka or tehsil ordinarily forming the maximum area to be placed under a local board'; the district board being only a supervising or co-ordinating authority. In the course of implementation, however this provision was subverted in most of the provinces. The provincial acts entrusted the district boards with all the funds and most of the functions, with provision for

the delegation of functions and money to the lower bodies at the discretion of the district boards. Since the district boards themselves were short of funds and without adequate functions, the lower level bodies hardly got any functions or money. Thus they failed to become effective institutions of local government. The district boards were, in practice, largely nominated bodies dominated by the local landlords, who considered it beneath their dignity to contest elections. In fact the elected members were generally looked down upon by the nominated members. They could hardly be called effective institutions as they had few resources, though they may have been given impressive functions. They were fully subservient to the district administration (Tinker: 1954, p. 54). Ripon's desire was to develop rural local government on the foundations of the ancient village system. But this remained only a pious wish.

Ripon's grand dream of establishing a strong and vibrant local self-government, however, remained a pious wish and failed in all directions. Writing in 1906 Gokhale said that local government 'still remains all over the country where it was placed by Lord

Ripon a quarter of a century ago, and in some places it has even been pushed back'. In support Tinker points out "In the early 1900s there were even fewer non-official chairmen in U. P. and Punjab than in 1882: there were two in U. P. and twenty nine in Punjab, all presiding over petty municipalities.....and only ten non-officials – all nominated – as chairmen of 'city' municipalities in Bombay, right up to 1910." (Tinker: 1954, p. 57).

The next important landmark in the evolution of local government in India was the appointment of the Royal Commission upon Decentralisation in 1907 "to enquire into the financial and administrative relations of the Government of India and provincial governments – and of 'authorities subordinate to them', and to report 'whether by measure of decentralisation or otherwise', the system of government might be 'simplified and improved'. The Commission submitted its report in 1909, which incidentally was also the year of the Morley-Minto reforms, which has been called 'the first major reform package since the 1892 Councils Act' as it introduced the representative principle to the councils attached to the central and provincial governments. (Keay: 2000, p. 469).

The recommendations of the Royal commission upon decentralisation have been characterised as “sound but cautious; conceived in terms of administrative improvement, rather than of national political aspirations.” (Tinker: 1954, p. 85). These recommendations may be summarised as follows:

- The village must be the foundation of any system of associating the people with the administration.
- It was no longer possible to restore the ancient village system, but the panchayat should be re-established as the instrument of a new kind of village government. The new system should be introduced ‘gradually and cautiously’.
- The village headman should become the *sarpanch* with other members being elected informally. The functions of the village panchayat should include petty civil and criminal cases, sanitation, minor public works and building and managing village schools. They should not be burdened with taxation. They should be supervised by district officers and not by district boards.

-
- The problem with district boards stemmed from the shortage of funds and absence of power to manage services for which they were made responsible. The funds of the district boards should be augmented by (a) transferring all of the land revenue cess (b) authorising them to raise the cess to two annas in the rupee (12.5%) and (c) giving block grants to the poorer boards on a long term basis and not tying funds to specified purposes. Non-local duties like plague and famine relief and upkeep of trunk roads should become provincial responsibilities. They should be given a freer hand in the field of education, public works and medical services. The District Magistrate should continue to be the chairman of the district board, but he should function as a 'constitutional' head abiding by the feelings of the board. Control from above should be strictly limited with the provincial government intervening only to suspend or abolish a board if it failed to discharge its statutory obligations.

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- Taluka and tehsil boards should again be established as the 'principal agencies of local government'. They should be assigned specific duties: management of minor roads, primary education and rural dispensaries, and given 50 per cent of the district board income.
 - Urban bodies should be almost entirely free of official control. The chairman and a majority of members should be elected non-officials. Committees should be set up for routine supervision of different services. Municipal boards should have full powers of taxation as well as control over budgets. They should be relieved of non-local duties like famine relief, town police, and maintenance of district headquarters hospital. Municipal administration must be strengthened by appointment of competent persons as Executive Officer, Medical Officer of Health and Engineer. Higher control was to be similar to that recommended in the case of district boards: the provincial government intervening only to suspend or abolish a municipal board

if it failed to discharge its statutory obligations (Tinker: 1954, pp. 85-87).

The next step in the evolution of local government came in the form of the Montagu-Chelmsford Report of 1918. It introduced the principle of dyarchy whereby certain subjects – agriculture, education, health, local government – were devolved to the provincial governments. Commenting on the state of local government it observed that there was still a lot of “all-pervading official activity” especially in the small towns and rural areas even after the setting up of local boards and municipalities. The Report echoed, in essentials, the position taken by the Decentralisation Commission in regard to the state of local self-government bodies. Popular control of municipal bodies prevailed only in the Presidency towns. In the rest of British India the recommendation of the Decentralisation Commission of directing the development of local bodies from without rather than within was given the go-by in the interests of results and efficiency (Singh: 2009). The Report came out strongly in favour of “complete popular

control of local bodies, and the largest possible independence for them of outside control.”

In the next few years village authorities were constituted in five provinces. Tinker has classified these villages into three categories:

- A village council assigned simple tasks like organising a school and perhaps also functioning as a judicial tribunal in minor matters
- An embryo municipality providing urban public services in large villages or small towns
- A rural authority, smaller than a sub-district board so as to be in touch with local feelings but large enough to be viable and capable of employing some technical staff.

In the United Provinces, village panchayats set up under the U.P. Village Panchayat Act, 1920 belonged to the first category. Panchayats of five to seven members were constituted for a circle consisting of the village and its surroundings. The chairmen and members were either elected or nominated. Their primary

function was to act as a petty court in civil and criminal cases, with exclusive jurisdiction in civil suits not exceeding Rs 25 in value, and in criminal cases the power of the panchayat was limited to imposing a maximum fine of Rs 10. Cases originating in panchayats could not be transferred to regular courts, but District Magistrates could quash their proceedings. These bodies were also given responsibility for sanitation and education and were also responsible for maintenance of tanks, wells and village tracks, which were financed by grants administered by the district officer and fines realised in discharge of the judicial functions. Supervision over these bodies was exercised by the District Magistrate and the revenue staff.

In 1922 a new District Boards Act was drafted in U.P., this time by the provincial government. It bore the stamp of the liberal ideas of the minister for local government Pandit Jagat Narain assisted by Mr C. Y. Chintamani. It sought to emancipate the boards from official control by making them “units of direct administration”. The bill faced considerable opposition in the Legislative Council, especially from the Muslim members and the landowners. The

former succeeded in getting separate representation for Muslims. The latter were opposed to the power given to district boards to raise the cess on land revenue from five 5 per cent to six-and-a-half per cent. Ultimately they relented when they succeeded in linking this proposal to the imposition of a tax on circumstances and property on non-agricultural income. The Act specifically stipulated that a board might not increase land revenue cess unless it simultaneously imposed the circumstances and property tax. Giving an overall assessment of the Act Tinker says: "Altogether the U. P. District Boards Act bore the impress of the new factors in politics – it reflected the Liberal faith in democracy, a conservative dislike of increased taxation and Muslim determination to safeguard their identity." (Tinker: 1954, p.133)

The process of democratisation and indigenisation of the polity was carried forward by the Government of India Act 1935, which while conferring Dominion status on India also established a federal structure with considerably more powers to the provinces than they had enjoyed earlier. Local government, as under dyarchy, remained the responsibility of the provinces. This situation

continued after independence under the Constitution of India, 1950. The subject of local self-government was placed in the State List.

Before proceeding further it will be relevant to devote some attention to the nature of the franchise for local government in the pre-independence period. It is useful to bear in mind that even as the local bodies (especially municipalities) were gradually becoming more representative over the years, they were still not democratic. The franchise was restricted to those who paid municipal taxes and to a few exceptional categories like university graduates. Women were effectively (though not formally) excluded from being voters since they would have to be owners of property in their own right. One of the aberrations of the law was that even companies, associations and joint families who owned property and paid municipal taxes had the franchise. The electoral principle was further complicated by a system of multiple electorates and communal voting systems to ensure representation of Muslims, Europeans, Anglo-Indians and Indian Christians. Furthermore, the Governor General nominated

members from trading houses, European businesses, and minority groups. (Singh: 2009). Tinker estimates that in the 1920s only 10 per cent of the population of Bombay, 4.8 per cent of Madras and 4.5 per cent of Calcutta possessed the right to vote. (Tinker: 1954: p. 148) In the rural areas the franchise was even more restricted. For instance it is reported that in the 1909 elections in Gorakhpur district, in a population of three million only four hundred were on the electoral rolls, of whom only sixty two voted! (Tinker: 1954, p. 77)

After independence the trajectory of local government in India has been shaped largely by the imperatives of development and the reluctance of state governments to permit local bodies – both urban and rural – to emerge out of their stranglehold. In fact, in many instances, local bodies today may be said to be less powerful than they were in the past. The most important development after independence in the field of local government was the report of Balwantrai Mehta Committee, 1957. This committee, it may be recalled, had been appointed to Study the Community Development (CD) projects and National Extension Service

(NES), which, it may be recalled had been initiated for the uplift of rural areas in 1952 and 1953 respectively. The Committee found that the progress of CD and NES was hampered by the absence of “a representative and democratic institution which will supply the local interest, supervision and care necessary to ensure that expenditure of money upon local objects conforms with the needs and wishes of the locality”. Such an institution, in the opinion of the Committee should be invested with adequate power and appropriate finances to enable it to evoke local interest and excite local initiative in the field of development. The Committee accordingly recommended the creation of a three-tier system of democratic decentralization (which later came to be known as the Panchayati Raj System), consisting of the village Panchayat at village level, the panchayat samiti at block level and the Zilla Parishad at district level, and recommended that the entire development administration should be handed over to these bodies.

Based on the recommendations of the Balwantrai Mehta committee most of the states established a three-tier panchayati raj structure. Unfortunately, the experience of the working of these

bodies was none too happy. Many states, it turned out, were not fully committed to the principle of democratic decentralization. As a result, despite the existence of legislation, panchayats in many cases remained a neglected lot. Elections were not held for years at a stretch, and they were hardly given any powers, functions or role. An assessment of the panchayat system during this period by the UNDP (UNDP, HDRC, n.d. p.6) points out:

However, the legislation that followed the Committee's Report basically continued the earlier enactments of Provincial Governments to re-iterate the three-tier structure and provide for over-riding powers of the State Government acting through the Collector. Panchayati Raj was a strategy for rural development in a context of centralism that was then seen as a historical necessity. The moral weight of the national movement required that the aspirations of the peasantry to better conditions of life be fulfilled. The Government that came to power initiated land reforms and institutional change to do away with nefarious traditions of discrimination and domination based on religion and caste. This required the will of strong Central and State Governments to be pitted against local vested

interests, whether landlords or 'superior castes'. Moreover, land revenues had to be reduced and since income levels were low and highly skewed between individuals and regions, reliance on the spread of indirect rather than the narrow incidence of direct taxes was necessary which naturally resulted in a centralised system of finance. These constraints, along with others related to the legacy of the Raj, partition of the country and the enthusiasm for a planned economy, shaped centralism. However, this centralism was not conducive to the growth in the status of local bodies. As the funding for Community Development projects dried up by the mid-1960s, panchayats stagnated. They languished for decades without funds, superseded by decisions of district collectors, without elections being held to reconstitute them and remained insufficient to provide representation for women, Scheduled Castes and Scheduled Tribes.

In 1977, another committee under Ashok Mehta was appointed which submitted its report in 1978. The main recommendations of this committee were:

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- The 3-tier system of Panchayati Raj should be replaced by the 2-tier system: Zilla Parishad at the district level and Mandal Panchayat consisting of a group of villages covering a population of 15,000 to 20,000
 - District should be the first point for decentralisation under popular supervision below the state level
 - Zila Parishad should be the executive body and made responsible for planning at the district level
 - Development functions should be transferred to the Zila Parishad and all development staff should work under its control and supervision
 - Panchayat Raj institutions should have compulsory powers of taxation to mobilise their own financial resources
 - There should be a regular social audit by a district level agency and by a committee of legislators to check whether the funds allotted for the vulnerable social and economic groups are actually spent on them
 - The state government should not supersede the Panchayat Raj institutions. In case of an imperative supersession,

election should be held within 6 months from the date of supersession

- Nyaya Panchayats should be separate from development Panchayats. They should be presided over by a qualified judge
- The Chief Electoral Officer of the state in consultation with the Chief Election Commissioner should organise and conduct the Panchayati Raj elections
- Seats for SCs and STs should be reserved on the basis of their population

States like Karnataka and Andhra Pradesh reconstituted their panchayati raj system on the lines recommended by the Ashok Mehta Committee. These, especially the Karnataka system, were held out as the model for other states to follow. Most of the other states, however, persisted with the old system.

Finally in 1991, the 73rd and 74th amendments to the Constitution created a uniform structure of rural and urban local government in the country. The noteworthy features of these amendments, which added Part IX and IXA to the Constitution, are:

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- Three-levels of local bodies (district, intermediate and village) are now mandatory for the rural areas (for States and Union Territories with a population less than 20 lakhs the intermediate level is not mandatory)
 - Three categories of local bodies (Municipal Corporations, Municipal Councils and Nagar Panchayats) are mandatory in the urban areas
 - Elections to rural and urban local bodies are to be held compulsorily every five years
 - If, for some reason, a local body is dissolved prematurely then elections to elect a new body have to be held within a period of six months
 - Elections to rural and urban bodies are to be conducted by an independent State Election Commission
 - Every five years a State Finance Commission is to be set up to advise on what portion of the State's revenues should be devolved to the local bodies; what the principle of devolution should be; what should be the principle of distribution of shares between rural and urban bodies and inter se distribution between different categories of local bodies; and what steps need to be taken for strengthening local bodies and augmentation of their resources

-
- Reservation of one-third of the seats for women and for SCs/STs in proportion to their population

II Local Government in Uttarakhand

Local bodies in Uttarakhand continue to be governed by the relevant legislation of Uttar Pradesh, which have been adopted by the Government of Uttarakhand. These acts are the Uttar Pradesh Panchayat Raj Act, 1947 and Uttar Pradesh Zila Panchayat and Kshetra Panchayat Act, 1961 in the case of the rural local bodies (the PRIs) and the Uttar Pradesh Municipalities Act, 1916 and the Uttar Pradesh Municipal Corporation Act, 1959 in the case of urban local bodies (ULBs). Though all these acts pre-date the 73rd and 74th Amendments, the conformity legislation of 1995 aligned them to the provisions of the Amendments. Uttarakhand is yet to pass its own legislation on the subject. A few amendments, rather minor in nature, have been made in the U.P. Acts keeping in mind the special circumstances of the state.

A broad overview of the history and present status of the PRIs and ULBs in the state is given below.

Rural Local Bodies

Uttarakhand has a panchayati raj structure consisting of Gram Panchayat at the lowest (village) level, Kshetra Panchayat at the intermediate or development block level and Zila Panchayat at the district level. There are at present 7541 Gram Panchayats, 95 Kshetra Panchayats and 13 Zila Panchayats in the state. After the formation of the new State in 2000 the government tried to bring about some rationalisation of the Gram Panchayat structure, the results seem to have been quite the opposite. For instance, the minimum and maximum population of Gram Panchayats was fixed at 300 and 1000 in the hilly parts of the state.⁶ The corresponding figures for the plains are 1000 and 5000. The ostensible reason was to prevent the proliferation of small rural bodies. Contrary to what was intended the number of Gram Panchayats has only increased over the years. Thus according to the report of First State Finance Commission, 2002-2006 there were 7055 Gram Panchayats in the State, which increased to 7227 by the time of the Second State Finance Commission, 2006-2011. The number has now gone up further to 7541. The structure of PRIs in the

state is non-hierarchical with each level more or less independent of the higher tier. This results in avoidable confusion because there is considerable overlap in the powers and functions of each level.

The existing structure of Panchayati Raj Institutions (PRIs) inherited from Uttar Pradesh predates the 73rd Constitutional Amendment by many years, although the three levels came into existence at different points of time. The Zila Panchayats of today have evolved from the District Boards established by the British in the erstwhile United Provinces early in the last century. Thus the District Boards of Nainital, Almora, Pauri and Dehradun came into existence between 1918 and 1923. The District Boards under the British were nominated bodies with some representation of non-officials. Their functions included running schools, dispensaries, veterinary clinics, cattle pounds, maintenance of rural roads, administering rural markets and vendors. They owned considerable land and had their own staff to discharge their numerous functions. They were given powers to impose and collect taxes, especially Circumstances and Property (C&P) Tax

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and fees, tolls and fines. These remain the main sources of own income of District Panchayats even today. After independence the District Boards were renamed as Zila Parishads by the Zila Parishad and Kshetra Panchayat Act, 1961. This Act was amended in 1995 to conform to the provisions of the 73rd Amendment and Zila Parishads now came to be known as Zila Panchayats.

Over the years, as the government expanded its role, many functions that in the past had been performed by District Boards and Zila Parishads were taken over by the State Government. Zila Parishads ceased to run schools and dispensaries, which were taken over by the education and health departments of the State Government. Simultaneously, the financial position of the Zila Parishads also became weaker. On the other hand, the expenditure of the Zila Parishads on salaries and allowances of its staff steadily increased because the state government prescribed the salary scales and allowances payable to the staff at par with those of State Government employees. In brief, the Zila Parishads became a pale shadow of their former selves in terms of functions and status, and came to be heavily dependent on grants from the State

Government. Their problems were compounded by the fact that they remained superseded for years at a stretch and were placed under the administrative control of the district administration. Thus, they lost whatever little autonomy they may have enjoyed in the past.

The amendment made in 1995 to the U.P. Zila Panchayat and Kshetra Panchayat Act, 1961 did not result in any material change in the status of the Zila Panchayats, except they now had constitutional protection, had to be compulsorily elected every five years, could not be superceded with impunity as in the past, and were assured some minimum financial assistance from the revenues of the state government on the basis of the recommendations of the State Finance Commissions. At the same time the position with regard to their powers and functions remained quite vague. Though the amended legislation specified functions of the Zila Panchayats, effective steps for the transfer of these functions and the associated funds and functionaries remain to be taken by the State Government.

The situation is no different in respect of the financial powers of the Zila Panchayats. They have only limited powers of levying taxes, tolls and fees. These powers have not been enhanced since the days of the erstwhile District Boards. The only tax leviable by them is the Circumstances and Property (C&P) Tax, which is a somewhat archaic tax imposed on those rural residents who have some means. The definition of circumstances is quite arbitrary and in practice is equated with income. Furthermore, all Zila Panchayats are not levying this tax. Thus, in Uttarakhand while the seven Zila Panchayats of Garhwal Division have been levying the tax, the six Zila Panchayats of Kumaon Division have not been doing so. C&P Tax is generally levied only on shops, restaurants, industries and commercial establishments, and is subject to a maximum rate of 3 per cent and maximum amount of Rs 15,000.00. In general the collections from the tax are rather modest in most of the districts, especially the hill districts. The only exceptions are Pauri Garhwal, Hardwar and Dehradun. In the absence of any other tax the Zila Panchayats are dependent on fees and tolls. Due to the absence of any significant economic

activity in the rural areas of the hill districts, the income from fees and tolls is quite low in these districts. They also do not have any weekly markets, which are a source of income for Zila Panchayats in the plains. In brief, the own sources of income of Zila Panchayats, especially those located in the hills, which account for ten out of the thirteen districts, are quite meagre. This is bound to have an adverse impact on their functioning as institutions of self-government as they are largely dependent on grants from the government. Many Zila Panchayats also find it difficult to pay the salaries, pension and gratuity of their employees.

The Kshetra Panchayats, which are the intermediate level in the panchayat structure, seem to be in an anomalous situation. Their area is coterminous with that of Development Blocks. They were made part of the three-level panchayat structure in 1961, following the recommendations of the Balwantrai Mehta Committee Report. Initially known as Kshetra Samities they came to be designated as Kshetra Panchayats by the conformity legislation of 1995. Though they have been in existence for almost twenty-five years,

there is, as yet, little clarity about their role and functions within the three-tier panchayati raj system. They have neither been assigned any independent functions or sources of revenue, nor do they have any employees, office premises, or money for office expenses. They are dependent on the Development Blocks for all these facilities. The U.P. Zila Panchayat and Kshetra Panchayat Act, 1961 assigns them almost the same functions as the Zila Panchayats (and which, incidentally, are also very similar to those assigned to the Gram Panchayats by the U.P. Panchayat Raj Act, 1947). There is no clear demarcation of functions between Kshetra Panchayats and Zila Panchayats on the one hand and Kshetra Panchayats and Gram Panchayats on the other, creating unnecessary and avoidable confusion. Kshetra Panchayats, moreover, do not have any independent sources of income. Theoretically, the Act gives them the power to levy water and electricity tax. In reality this power is meaningless because it is conditional on the provision of necessary services viz., water supply for drinking and irrigation and electricity. Since the Kshetra Panchayats do not provide these services, which are the exclusive

responsibility of the Uttarakhand Jal Sansthan, Irrigation Department and Uttarakhand Power Corporation respectively, this provision of the Act has no practical significance. The Kshetra Panchayats have been given the power to levy the same fees and tolls as the Zila Panchayats. In actual practice this implies that once the latter collects the fees and tolls, there is no scope for the former to impose levies on the same establishments. Thus, for all practical purposes, the Kshetra Panchayats end up with no real sources of income. In this way they seem to have become merely an extension, and that too a subordinate one, of the Block machinery. The only function they seem to be performing is implementation of anti-poverty programmes like SGRY and MNREGA at the Block level for which they are given 30 percent share in the funds allocated to the district. This, it may be pointed out, is merely an agency function.

Village level Panchayats, as formal state-sponsored institutions, have existed in the state in some form since 1920. In that year the then government enacted the United Provinces Village Panchayat Act to “assist in the administration of civil and criminal justice in

the rural areas and also to effect improvement in the sanitation and other common concerns of the villagers.” The U.P. Panchayat Raj Act, 1947, replaced the earlier Act as it was felt that village Panchayats constituted under the 1920 Act were not representative bodies and their scope of work too was restricted. The U.P. Panchayat Raj Act, 1947 was amended in 1994 to conform to the provisions of the 73rd Constitutional Amendment. The new state of Uttarakhand has made only minor modifications to the Act mainly dealing with the size of Gram Panchayats i.e. minimum and maximum population, number of members and population size of territorial constituencies.

Despite the fact that village Panchayats in the State have a long history they continue to be weak institutions and lack sufficient powers and financial resources. As a result they are dependent on the State Government for both direction and finances. As mentioned above, the Act of 1947 (as amended in 1994) gives the Gram Panchayats almost the same functions as are available to the Kshetra Panchayats and Zila Panchayats, resulting in duplication and avoidable confusion. Moreover, the State

Government has not actually transferred any of these functions to the Gram Panchayats. An attempt had been made in 1999 by the Uttar Pradesh Government to transfer some functions like primary education, health, minor irrigation etc. Some government personnel connected with these functions were also to be placed under the control of the Panchayats. Though necessary orders had been issued in this regard, they were not actually given effect to in the face of stiff opposition from the affected personnel. In 2005 the Uttarakhand Government also decided to transfer 14 functions to the Panchayats. These functions are: horticulture and food processing, social welfare, agriculture, drinking water and sanitation, food and civil supplies, medical health and family welfare, women and child development, minor irrigation, primary education, adult and non-formal education, libraries, cultural activities, rural housing, and poverty alleviation. Government Orders in respect of 10 functions have also been issued. Once again, this remains, as yet, only a paper exercise because it has not been accompanied by a transfer of necessary funds and functionaries.

The Gram Panchayats in Uttarakhand suffer from the twin malady of weak finances and weak administrative support. They have only limited financial powers, and they are not exercising even these. Section 37 of the U.P. Panchayat Raj Act makes it mandatory for every Gram Panchayat to impose a surcharge (ranging from 25 to 50 paisa in the rupee) on land revenue. In actual practice very few Gram Panchayat are collecting this tax. The State Government has been unable to ensure that Gram Panchayats discharge their mandatory obligation by collecting the tax. Gram Panchayats are authorized to levy a number of taxes such as on visiting cinemas, theatres and similar means of entertainment; on owners of vehicles, other than motorised vehicles, located or plied within the area of a Gram Panchayat; on people who expose goods for sale in markets, including periodic markets, and fairs under the jurisdiction of the Gram Panchayat; on owners of houses where cleaning of privies and drains is done under the aegis of the Gram Panchayat; for cleaning and lighting of streets. They can also charge fees on animals sold in markets owned by, or under the control of, the Gram Panchayat; for use of slaughter houses and

staging areas (*paraos*); water charges, provided the Gram Panchayat stores water for domestic water supply; and irrigation charges provided the Gram Panchayat has constructed or maintained water storage facility for minor irrigation.

In actual practice very few GPs (all located in the plains districts) have been collecting some of these taxes and fees. Elected representatives of local bodies, whether rural or urban, are in general strongly opposed to any suggestion to impose, revise, enhance or rationalise any tax or fees. They say that they were not willing to face the wrath of their electorate by imposing a financial burden on them. Some were willing to pass the buck in this regard to the state government. The fact that this would go against the principle of self-government seems to be of no concern to them.

The absence of administrative support has emerged as one of the major weaknesses of the Gram Panchayats in Uttarakhand. As a result they are unable to do many of the things expected of them as institutions of self-government at the village level. The only administrative support available to the Gram Panchayats is the

Gram Panchayat Vikas Adhikari who also functions as the Secretary of the Gram Panchayat and is the keeper of all official records. The Report of the Second State Finance Commission of Uttarakhand, 2006-2011, noted that for the 7227 Gram Panchayats in the state there were only 1549 Gram Panchayat Vikas Adhikaris in position. This means that on an average a Gram Panchayat Vikas Adhikari looks after the work of 4-5 Gram Panchayats. It also reported instances where one Gram Panchayat Vikas Adhikari was looking after as many as 8 or even 10 Gram Panchayats.

The conformity legislation of 1995, while ostensibly designed to give effect to the provisions of the 73rd Amendment, only tended to follow the letter of the law and not its real spirit and intent. Thus, while it did make provision for regular elections every five years to be conducted by a State Election Commission, clearly laid down that if a panchayat were dissolved, elections for a new panchayat had to be held within six months, specified the functions that could be assigned to the three levels as per the provisions of the 11th Schedule, and made provision for devolution

of funds to the Panchayats through the mechanism of the State Finance Commission to be appointed every five years, it failed to provide the conditions for the emergence of the PRIs as institutions of self-government at the local level, which is the real intent of the 73rd Amendment. The First State Finance Commission, Uttarakhand also remarked on the shortcomings and limitations of the legal framework of the Panchayats in these words: “It must be noted that while the laws (relating to the Panchayats) are very comprehensive, many provisions regarding the listed fields of works, the proper functioning of democratic control, respective officials’ responsibility for and equations with the district, block and village Panchayats, exercise of financial powers etc. have been ignored in actual practice.”

Urban Local Bodies

There are three categories of urban local bodies (ULBs) in Uttarakhand: Nagar Nigam or Municipal Corporation, Nagar Palika Parishads and Nagar Panchayats (the last named were established under the U.P. Town Areas Act, 1914, which now stands repealed after the conformity legislation was passed in 1994) .

There are at present 63 ULBs consisting of one Nagar Nigam (at Dehradun), 32 Nagar Palika Parishads and 30 Nagar Panchayats.

The ULBs of Uttarakhand are governed by the municipal legislation of Uttar Pradesh viz. U.P. Municipal Corporation Act, 1959, which is applicable to the sole Municipal Corporation of Dehradun, and U.P. Municipalities Act, 1916, which is applicable to the Nagar Palika Parishads and Nagar Panchayats. Like the Zila Panchayats, municipal bodies of Uttarakhand also have a fairly long history. Some of them, as mentioned earlier came into existence as far back as the end of the nineteenth century.

A comparison of the present status of ULBs with their status during the decades of the 1950s and 1960s shows that many important functions that the ULBs performed in the past have been taken over by the State Government. In the past, municipalities of Uttarakhand were running primary schools, dispensaries, veterinary hospitals, looking after water supply and some (e.g. Mussoorie and Nainital) were also generating and distributing electricity. Primary schools were taken over by the Basic Shiksha Parishad, water supply by the Garhwal and Kumaon

Jal Sansthans (now the Uttarakhand Jal Sansthan) and electricity generation and distribution passed into the hands of first the U.P. State Electricity Board and now the Uttarakhand Power Corporation. All properties and assets connected with these functions were also transferred to the department/agency to which the function was transferred without any compensation whatsoever being paid to the ULBs. In the past municipalities also had the power to approve building plans as per their bye-laws and ensure that the plans were followed in actual practice. This power has now passed into the hands of the Development Authorities in places where such authorities exist, or into the hands of the Prescribed Authorities in the remaining places, designated as Regulated Areas. The ULBs have also lost some important sources of revenue like octroi and toll tax, which were abolished by the state government, again without adequately compensating the municipal bodies for the recurring loss suffered by them. Development charges and fees for approval of building plans are also no longer available to them as these are now collected and kept by the Development Authorities or Regulated Areas. The

ULBs, thus, have suffered a serious loss of independence which has eroded their status as self-governing institutions. Instead, they have been transformed into subordinate agencies of the State Government. The situation today is such that they cannot do many things without the permission of the State Government. They cannot make any appointments unless the State Government creates the posts and grants permission to fill them. Personnel in supervisory positions belong to centralized services, appointment to which is made by the State Government. The state also retains the power to transfer people belonging to the centralized services. The financial condition of most of the ULBs (with only a few exceptions) is none too strong. Their main sources of income are the taxes and fees levied by them, grants from the Central Finance Commission, grants from the State Government and devolution recommended by the State Finance Commission. Section 128 of the U.P. Municipalities Act authorizes the municipal bodies to impose the following taxes: taxes on property, trade, professions, theatres, vehicles, dogs, animals, circumstances & property, water, sewerage, drainage and

conservancy. In actual practice property tax is the single most important tax (in many cases the only tax) being levied by the municipalities and is also their main source of own income. As noted earlier, all elected bodies show extreme reluctance to either impose taxes or revise existing rates. The other important source of income of the municipalities is licence fees. These are being levied to a varying extent by all municipalities. In general, the larger municipalities and those located in the plains districts of Hardwar and Udham Singh Nagar, the plain areas of Nainital, Pauri and Champawat districts, and in the Doon valley are able to raise more money from licence fees as compared to the smaller municipalities, especially those located in the hills. This is to be expected, since the income from licence fees is dependent on the level of economic and commercial activity in the urban centres.

Local Bodies in Uttarakhand (both urban and rural) are unable to access plan funds from the state sector because they are not represented in the existing District Planning Committees. In the absence of any allocations for the local bodies (rural or urban)

the District Plans are merely a compilation of departmental schemes. This is so because the state government had so far failed to constitute District Planning Committees envisaged by Article 243ZD of the Constitution, which provides that at least four-fifths of the members of the Committee should be from among elected members of the District Panchayats and Municipalities in the district. Hopefully the situation will improve now as District Planning Committees, as mandated by Constitution, have now been constituted in the State.

III A New Architecture of Local Government

At the outset it would be worthwhile to identify some important principles and criteria for judging what constitutes a good system of local government. A good local government system has to conform to certain design parameters that ensure responsibility and accountability. There should be as little scope as possible for conflict and rivalry with higher political structures. Local governments must, therefore, have a clearly defined functional space which is their own, where higher level governments have little role to play. They must have a clearly defined fiscal space,

consisting of an exclusive tax base, sufficient tax assignments and where necessary fund transfers for specific purposes. They must have the freedom to secure the capacity that they need, both institutional and in terms of personnel to run them. Lastly, there must be in place good accountability systems. It is only when these criteria are fulfilled that there would be the right incentives for functioning as local governments in the true sense of the term, and have the incentive to seek the capacity to perform effectively. Citizens would also be more vigilant and seek good performance, particularly if they perceive that it is their taxes that pay for the delivery of services. Most important, a good local government framework requires compliance with all these criteria and not merely with a few convenient ones. Any deviation from these key principles would mean a distorted system of local government; indeed, a system that is not one of local government at all, but one of politically elected implementing agencies, which are inferior to and accountable more to tiers of higher level governments that provide their functional and financial lifelines, rather than to their local people.

Theoretical justification for having overlapping layers of local governments may be found in terms of the difficulty in separating expenditure and service delivery responsibilities with such precision as to ensure that each local government is a self-contained unit. Hierarchies of local governments might be considered necessary where there exist different levels of externalities to be dealt with. Thus what cannot be delivered by a village Panchayat may be entrusted to the Intermediate Panchayat and what cannot be delivered by the latter, to the District Panchayat. It is doubtful whether the issues were analysed in these terms by either the Balwantrai Mehta Committee or the Ashok Mehta Committee, or even by the framers of the 73rd and 74th amendments in suggesting the design of local governments. The recommendations of the Balwantrai Mehta, as mentioned earlier, were influenced by the need for bringing about an element of participation in the community development programme. It therefore considered the district, as a historically well understood level of administrative organization and the village as the traditionally recognized level of grassroots level organization and sandwiched in between the new concept of the development block,

as the level at which the overlapping layers of local government effort would be coordinated and run. The Ashok Mehta Committee suggested the two tier system with a greater awareness of what constituted a local government, but in a large measure, both reports were more influenced by design patterns of line departments, rather than by the theories of public finance. The approach seemed to be to design local governments in the same manner as departments – the Gram Panchayat being the field office, the intermediate level the block office and the Zilla Parishad/ Panchayat, the district office. However, what was perhaps not realized was that these are elected bodies with each elected representative at each level, claiming to rightfully possess the mandate of the people. Hierarchical political structures with overlapping jurisdictions, is clearly a recipe for conflict and discord, rather than harmonious functioning of the whole.

The basic assumption underlying my attempt to re-vision the structure of local government in Uttarakhand is the acceptance of the fact that people live either in villages or in towns and cities. Hence they have certain common needs for basic civic services

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like sanitation, drainage, passageways (streets and lanes), street lighting, water supply etc which transcend the distinction between rural and urban areas.⁷ There is therefore no case for distinguishing between local bodies in villages and towns or cities in terms of functions. The main difference between villages and towns and cities should be in the scale of their activity, which is a function of the population and area served by the local body. Thus the needs of a village for services are quantitatively less than that of a town; the needs of a town less than that of a city; and the needs of a small village less than that of a large one. In qualitative terms there is not much of a difference. Based on this assumption, I argue that there is really no justification for a distinction between gram panchayats and municipalities. We should consequently have only one category of local body. We may call it by any name – municipality, panchayat, or any other name. If this basic proposition is accepted then it also follows that there is also no need for separate legislations for rural and urban local bodies. There should instead be one common law for both. The only distinction that is relevant, and which may be provided for in the

act, is between small and large local bodies. Local bodies serving a large population may have a larger array of functions than the basic civic functions, as compared to the smaller local bodies. This stands to reason since the larger bodies are also likely to have much more income than the smaller ones, enabling them to take on many more responsibilities. Each such body would have exclusive geographical jurisdiction, with certain core functions that do not overlap with those of other local governments.

The basic unit of local government should be given the power to impose all those taxes, fees, tolls which at present are available to the urban local bodies. Tax on property should be made mandatory for all civic local bodies at this level. This will also help solve the problem of large-scale peri-urban growth that characterises all medium and major towns. These settlements continue to be part of rural panchayats, while for all practical purposes being extensions of the urban area, and remain devoid of all basic civic services like sanitation, solid waste removal, street lighting etc. The Second Administrative Reforms Commission in its report on local governance also recognises

this problem when it states “the peri-urban areas around the growing cities have hybrid characteristics of both village and town, and their special needs must to be (sic.) addressed in an integrated manner.” (p. 30). As an incentive to erstwhile Gram Panchayats whose population is less than say 5000, the State government may agree to give as grant an amount equal to what they realise through property tax.

Above the basic unit of local government, ideally there is need for only one other level. Every state, in my view, should have the option of deciding what the higher level should be – district, block, tehsil, taluka or some other unit. A higher level is needed to take care of externalities: services or facilities that cover more than one village. In Uttarakhand, I am of the view, that the district should be the locus of the higher level local body. The reason is that District level bodies, as pointed out earlier, have been in existence for over ninety years in the state. District Boards of Almora, Nainital, Pauri and Dehradun (which covers the bulk of the state, since the other districts barring Tehri Garhwal and Uttarkashi that constituted the princely state of Tehri Garhwal, were part of these

districts till after independence) were established between 1918 and 1923.⁸ The intermediate level body, on the other hand, is not only a more recent creation, but it is completely subservient to the block set-up and does not have any independent functions. It was recommended by the Balwantrai Mehta Committee to promote popular participation in CD projects and the NES. Today these programmes have lost their importance and have instead been replaced by a plethora of Centrally Sponsored Schemes which are being administered by the block administration with the assistance of the Kshetra Panchayats, which only act as agents of the state and central governments for implementation of these programmes. In short the intermediate level does not have any place within the framework of local government.

A two-tier local government structure, as outlined above, is however an ideal form. It may not be very practical, as it would entail amendment of the constitution (especially the 73rd and 74th amendments), which may be rather difficult to accomplish without a consensus on the issue among major political parties and states. Till then a three-tier structure would have to be persisted with. It

is important to craft the three-tier structure with great care in order to avoid the pitfalls of the present system. In particular, each level should have a clearly defined functional and fiscal space with as little scope as possible for overlapping of functions and responsibilities and minimizing the possibility of conflict of interest. They should also be endowed with adequate funds and functionaries to enable them to discharge their responsibilities effectively. An outline of a structure is proposed here.

The intermediate level local body should be given all the powers, functions and revenue raising powers, both tax and non-tax, of the present district level body. An important role that logically belongs to this body is looking after matters that straddle two or more local bodies within its jurisdiction. A similar view was expressed by the second State Finance Commission of Uttarakhand:

Kshetra panchayats and zila panchayats, being spread over a large rural area, cannot obviously function as civic bodies. Their focus should therefore be on area development activities. Kshetra panchayats should have responsibility for activities/ works that serve more than one gram

panchayat as also schemes which are of such magnitude as to be beyond the competence of a GP. Zila panchayats should be given the responsibility for activities and works that have a district-wide scale and focus. (Report of the Second State Finance Commission, Uttarakhand: para 9.4).

Not only is it important to devise a meaningful role for the intermediate level, but it is also equally important to free it from close identification with the block administration.

The district level unit should not have the form and status of the present District Panchayat with almost the same or similar functions as the other levels of panchayats. It should instead be a planning body for the district, subsuming the functions of the District Planning Committee. It would be somewhat analogous to the District Council suggested by the Second Administrative Reforms Commission, “with representatives from all rural and urban areas, that will function as a true local government for the entire district.” (Sixth Report, Second ARC 2007, p.31) with one caveat: the members of the District Council should not be elected directly by territorial constituencies, but by members of other local bodies. This will help avoid any possibility of conflict. Along

with its other duties, the District Council can also function as a non partisan dispute redressal mechanism to resolve issues that may arise between local governments or between the State and local governments of the District. The District Council should have the power to appoint or associate various subject matter specialists to assist it in discharging its planning function. It need not have to seek the concurrence of the State Government for this purpose.

The suggestion of the ARC that the District Collector should continue as the CEO of the District Council, 'till such institutions gain strength' is not conducive to the healthy development of the institution. It leaves no incentive for States to move towards establishing the District Council as an independent and non partisan body. It would be advisable if from its inception, the CEO of the district council is a full time officer of sufficiently high stature, not less than that of the District Collector. Apart from that of the CEO he should not be saddled with any other administrative responsibility. The District Council should in course of time evolve into a full-fledged District Government.

In the context of Uttarakhand, I deem it necessary to emphasize that the State must urgently formulate its own local bodies act as has been recommended by the Second State Finance Commission as well. The new local bodies act should take a fresh look at the structure of local government in the state along the lines indicated above. In particular, there is a strong need to rationalise the number of village level bodies by significantly reducing their numbers. The present number of 7541 Gram Panchayats for a rural population of about 63 lakhs is much too large. Comparison with neighbouring Himalayan states can help place this issue in proper perspective. Himachal Pradesh with a rural population of about 55 lakhs has only 3330 Gram Panchayats and Jammu & Kashmir with a rural population of over 76 lakhs⁹ has 4139 Halqa Panchayats. Comparison with neighbouring Nepal is also quite revealing. According to the local government system in the country, the Village Development Council (VDC) is the basic unit. For a rural population of over 2 crores Nepal has only 3913 VDCs. There is therefore a strong case for reducing the village level local bodies by about half in Uttarakhand. This can easily be done

The second strand of thought is represented by the attempt to see local governments as institutions for promoting development. The reports of the Balwantraoi Mehta and the Ashok Mehta committees are the best examples of this approach. I would venture to add that it also permeates the 73rd and 74th constitutional amendments in substantial measure, though they have also made some hesitant attempts to promote local bodies as institutions of self-government. It is useful to bear in mind that these amendments derive their inspiration and validity from Article 40 in Part IV (Directive Principles of State Policy) of the Constitution. This Article directed the State to “organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government”. This Article, it may be recalled, was a grudging concession to Mahatma Gandhi’s concept of Panchayati Raj, about which Dr Ambedkar had serious misgivings. On one point, however, I am quite clear: the basic structure of Panchayati Raj as it exists in India today bears little relation to Gandhi’s ideas on the subject. The Gandhian concept of governance moves in concentric circles from the

village upwards, not downwards from the central government as is the pattern in contemporary India. There is, however, some built-in tension, reflected in the language of the 73rd Constitution Amendment Act, between the Gandhian notion of ‘village republics’ exemplified by Art. 243 G that gives the panchayats responsibility for “preparation of plans for economic development and social justice”, and their dominant role as implementing arms of state and central governments as mentioned in sub-section (b) of the same article which says the PRIs will be responsible for “implementation of schemes for economic development and social justice *as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule*” (emphasis added) (IRMA, p. 35).

The third strand of opinion, and which incidentally also underlies the framework that I have outlined, is represented by the liberal approach of viewing local governments as essentially political institutions fulfilling the needs of representation and political education. As such they are entitled to distinctive powers and functions, a specific fiscal domain and not subject to unnecessary

control from higher levels of government. They have to be seen as part of the structure of governance at the local level. Lord Ripon's Resolution is the earliest expression of this approach to local government. Unfortunately, as I have shown, his ideas were subverted in actual practice.

A recent analysis that attempts to widen and link the developmental role of the PRIs to the changing relationship between the state, civil society and discourses of citizenship within the context of an evolving liberal democratic political order deserves attention. The *State of Panchayats: 2007-08* by IRMA provides the clearest statement in this respect as will be evident from the following quote:

The current appreciation of the importance of 'bottom-up planning and the role of PRIs in facilitating such processes marks a significant conceptual shift in the way that the relationship between the state and citizen is being imagined. In this regard, the idea of civil society, that space in which citizens act in concert (formally or informally) to exercise critical surveillance over the state to keep it accountable becomes important. PRIs represent an

important step in bringing the citizenry, civil society and the state's developmental objectives into greater harmony. This has significant implications for the changing contours of our liberal democratic political order, one that had its origins in a colonial past." (IRMA, p. 20)

Finally, I wish to reiterate that restructuring the system of local government in India along the lines suggested is an essential prerequisite for an effective and empowered representative democracy. It has even greater relevance to a mountainous state like Uttarakhand where the population is scattered in small habitations scattered over the hill-sides and valleys. Effective representation to such a population in institutions capable of taking care of their immediate problems can only be provided by decentralised institutions that are fully empowered. There is little doubt that it will also lead, in course of time, to improved governance. The argument of efficiency and administrative convenience, generally given in support of decentralisation and local government can only be a secondary one at best. The primary argument is political – promoting participation and representation, deepening the roots of the liberal democratic structure and giving

voice to the citizens. A necessary reform for achieving this goal is a radical re-orientation of the civil service. Reform of the administrative system has to accompany any attempt at bringing about effective decentralisation. As long as the Collector system, along with its attendant mindset and attitudes, persists at the local level any hope of meaningful empowerment of local bodies and effective decentralisation would remain only a hope. We will have to go back to the drawing board to fashion anew the framework of the administrative structure conducive to an empowered decentralised polity. Sadly, the Second Administrative Reforms Commissions has not approached the issue from this perspective. Hence its recommendations in this regard remain half-hearted.

¹ In the words of the State of Panchayats: 2007-08 by IRMA “decentralisation and local government in India have been part of a historical project. The historical legacy, simultaneously a strength and a weakness, continues to inform contemporary discourses, policies and practices.” (IRMA, p. 33)

² Two caveats need to be entered here. Firstly, India of the eighteenth and nineteenth centuries refers, for the purposes of this paper, only to British India as defined in the Interpretation Act passed by the British Parliament in 1889 as follows: “The expression *British India* shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India”. It excludes any territory under the

native rulers or princes. The state of local government in princely India constitutes an area of complete ignorance to me, and maybe considered a shortcoming of this paper. I keenly look forward to the labours of a researcher to fill this gap. Secondly, I have not made any reference to the pre-British history of local government, as I agree with (a) Tinker (1954, p.15) who says that “Local government in present-day India....has inherited but little from indigenous local institutions”; and (b) IRMA (2009, p. 33) according to which “The local government institutions set up during the colonial period and subjected to various degrees of transformation in the post-independence period were not the outcrop of ...traditional institutions. There was a definite ontological break, from being traditional and hence deriving legitimacy from the cultural sphere, to being statutory/administrative creatures belonging to the rational-legal sphere of the state.”

³ About Calcutta S. W. Goode wrote in *Municipal Calcutta: Its institutions in their Origin and Growth* (1916): “The city was little better than an undrained swamp, surrounded by malarial jungle and pervaded by a pestilential miasma” (quoted in Singh: 2009).

⁴ The use of the term local “self-government” appears to be unique to India since elsewhere (including Britain that has been the model in this case, as in many others) the preferred term is simply local government. The reason for this idiosyncrasy is an interesting one. On the one hand it refers to the sharing of power between the colonial government and the native population, whereby the latter were given some limited powers over local affairs, whereas there was no such sharing at the former level. On the other hand it was a convenient device to distinguish municipalities from the Presidency or provincial government, which at that time were known as the local government (Singh: 2009).

⁵ Municipal Acts: 1883, North-Western Province; 1884, Madras, Bombay, Bengal and Punjab

District Board Acts: 1883, North-Western Province, Punjab, Central Provinces; 1884, Madras, Bombay; 1885 Bengal.

⁶ According to the Second State Finance Commission of Uttarakhand as many as 812 Gram Panchayats had a population less than 300 “the smallest being with a

population of merely 39” (Report of the Second State Finance Commission, Uttarakhand, para 9.9).

⁷ According to the Second State Finance Commission of Uttarakhand “As residents of villages, people have a right to certain essential civic services like sanitation and solid waste management, drainage, maintenance of paths, lanes and roads inside the village and street lighting. These, therefore, should be the obligatory and priority functions for gram panchayats. We have not included water supply for reasons indicated in chapter 8. Other functions should only be of a discretionary nature to be taken up if the gram panchayats are adjudged to have the capability to handle them and if adequate funds and functionaries are placed at their disposal.”

⁸ According to the report on local governance of the Second Administration Reforms Commission “The districts are over two centuries old and have come into their own as vibrant political, cultural, economic and administrative entities, with each having its own distinctive characteristics. Despite this, the artificial rural and urban separation meant that people continue to view the Zila Parishad or the municipality as just another body and not the embodiment of the district in political terms. Not surprisingly, in most States, the District Collector continues to remain the symbol of authority in the district”. (p.30)

⁹ All population figures are as per the 2001 Census

¹⁰ Table 9.1

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